



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Request for Council Authorization to Join Amicus Curiae Brief
(Tobe, et al. v. City of Santa Ana)

MEETING DATE: July 6, 1994

PREPARED BY: City Attorney

RECOMMENDED ACTION: Council authorization to join Amicus Curiae brief in the above captioned case, which relates to cities authority to regulate camping by the homeless on public property.

BACKGROUND INFORMATION: For several years the City of Santa Ana has had a significant problem with large numbers of homeless persons congregating in encampments at the Civic Center Plaza.

In response to this problem, the city enacted an anti-camping ordinance which restricted the ability of homeless persons to encamp on public property.

In Tobe v. City of Santa Ana the Court of Appeal struck down the ordinance as unconstitutional. The case is currently on appeal to the Supreme Court of California. At stake in this case is the power of cities to regulate problems associated with homelessness.


While Lodi Municipal Code Chapter 15.52 et seq. is dissimilar to the ordinance at issue in Tobe the broad scope of the Court of Appeal ruling could render Chapter 15.52 et seq. largely unenforceable as applied to homeless individuals on public property.

The Tobe court implied that homeless individuals have a constitutional right to encamp on public property and to perform their day-to-day activities there.

The importance of this case cannot be overstated as it may greatly limit the ability of the City to deal responsibly with the issue of homelessness and its secondary effects on the quality of life in this community.

FUNDING: There will be no cost to the City to join in this Amicus Curiae brief.

Respectfully submitted,



Bob McNatt
City Attorney

BM:pn

CCAMICUS.1/TXTA.01V

APPROVED _____

THOMAS A. PETERSON
City Manager



City and County of San Francisco:

Office of City Attorney



Louise H. Renne,
City Attorney

JUN 15 1994

Michael E. Olsen **City Attorney's Office**
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June 10, 1994

Re: Tobe, et al. v. City of Santa Ana, Supreme Court
of the State of California, No. S-038530; Appeal
from Fourth District, Division 3, Nos. G-014257
and G-014536

TO ALL CALIFORNIA CITY ATTORNEYS:

The League of California Cities' legal advocacy committee has passed a resolution urging all California cities to join in an amicus curiae brief seeking reversal of the decision of the Court of Appeal in the above-captioned case. The City Attorney for the City and County of San Francisco has volunteered to prepare the brief. As set forth on the attached "Application for Permission to File Amicus Curiae Brief, etc.," we expect the brief to be due on July 31, 1994.

The decision in Tobe, et al. v. City of Santa Ana, 22 Cal.App.4th 228 (1994), is a sweeping decision by the Fourth District Court of Appeal striking Santa Ana's laws against public camping and public storage of personal goods. The Court held that -- so long as other housing alternatives were unavailable -- a city's homeless population has the right to camp, live, and conduct "life-sustaining" activities in public places. See also Pottinger v. Miami, 810 F.Supp. 1551 (S.D. Fla. 1992) (holding similarly). The Tobe ruling is not merely "as applied" to Santa Ana, but enunciates an implied general constitutional right to public housing, a right expressly rejected by the United States Supreme Court. Further, by constitutionalizing the right to live, sleep, and conduct personal activities in public places, the Tobe decision removes from municipal government the freedom to strike its own balance between the needs of individuals and the needs of the community. Regardless of the particular policy of any community, the freedom to pursue that policy at a municipal level must be preserved.

The attached "Application for Permission to File Amicus Curiae Brief, etc." more fully sets forth the position that we intend to take in our brief.

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We request that you agree to join your name to the list of Amicus Curiae that seek reversal of the decision in Tobe. Should you elect to join, please authorize us in writing to add your name to the members of the League of California Cities that join this amicus brief.

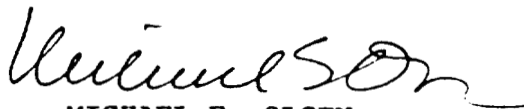
Further, it will be extremely useful to provide to the Court a compendium of the myriad statutes, regulations, and ordinances that California cities use to maintain public areas. If your jurisdiction enforces laws against camping, public lodging, sleeping in parks, obstructing sidewalks, or conduct of that kin, please provide along with your authorization a copy of the relevant statutes, ordinances or regulations. Because we will request Judicial Notice, please include with the copy the cover page of the volume in which the law appears (indicating the jurisdiction, year, and title of the law) as well as the specific section and language of the law.

We request that you respond by July 10, 1994, in order that we may incorporate fully all submissions.

Thank you. Please do not hesitate to contact me if you have any questions.

Very truly yours,

LOUISE H. RENNE
City Attorney



MICHAEL E. OLSEN
Deputy City Attorney

Enclosure

• The following is a list of the documents enclosed:



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June 9, 1994

BY HAND

Civil Clerk
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Re: Tobe, et al. v. City of Santa Ana, Supreme Court
of the State of California, No. S-038530; Appeal
from Fourth District, Division 3, Nos. G-014257
and G-014536

Application for Permission to File Amicus Curiae
Brief on Behalf of League of California Cities and
City and County of San Francisco

To The Honorable Chief Justice of the Supreme Court of the
State of California and the Associate Justices of the
Supreme Court of the State of California:

By this letter, amicus curiae the City and County
of San Francisco applies for permission to file an amicus
curiae brief in connection with this Court's review of the
decision in Tobe v. City of Santa Ana, 22 Cal.App.4th 228,
232 (Ct. App. 4th Dist., Div. 3, February 2, 1994). The
Court of Appeal decision in Tobe struck Santa Ana's anti-
camping ordinance with a broadly articulated constitutional
ruling. The scope of that ruling threatens efforts of
cities of this State to regulate the use of public spaces,
including enforcement of laws against public camping,
lodging, sleeping, public urination and defecation, public
intoxication, and other conduct in public spaces.

The efforts of San Francisco and other California
cities to preserve urban public spaces such as parks and
sidewalks are severely constrained by the prohibitions in
Court of Appeal's Tobe ruling. That decision held that
Santa Ana's anti-camping ordinance violated three
constitutionally protected rights: the right to travel, the
right to be free from cruel and unusual punishment, and the

due process protection against vague or overly broad laws. The expansive articulation of these rights by the Court of Appeal in Tobe is without precedent. Were it to stand, the Tobe ruling might reverberate to topple any law that restricts the use of public property for private conduct and rob California cities' of their freedom to address community concerns in manners appropriate to their community.

The City and County of San Francisco is familiar with the issues raised in Tobe as well as in Joyce v. City and County of San Francisco, 846 F.Supp. 843 (N.D.Cal. 1994), a pending case in which San Francisco has successfully defended its public camping, lodging, sleeping and obstruction ordinances against attempts to enjoin their enforcement on the same constitutional grounds.

Applicant the City and County of San Francisco notes that "all of the evidence in the superior court [that formed the basis of the Tobe decision] was presented by petitioners without legal objection or factual challenge from the city." Tobe, 22 Cal.App.4th at 232. Accordingly, San Francisco believes further presentation is needed on the following issues:

1. The holdings in Tobe regarding the right to travel, the Eighth Amendment ban on cruel and unusual punishment, and vagueness and overbreadth are legally unsound. The Court of Appeal in Tobe overstated the scope of these rights in striking the laws at issue in Tobe.
2. The holding in Tobe, even if warranted on the record before the court in this case, sweeps too broadly. The broad articulation of the right to travel and Eighth Amendment rights, for example, will upend municipal efforts to strike a balance between individual and community needs when addressing homelessness. These community efforts, including enforcement of applicable statutes, ordinances or regulations, were not before the Tobe court and should not be felled by sustaining its holding.
3. The Tobe court's declaration that homeless have "no choices" is not warranted by either the record before it or the broader reality. Indeed, the Tobe court's quick conclusion regarding the nature and causes of homelessness defies decades of evolving sociological studies, which demonstrate no consensus about homelessness. Furthermore, amicus curiae San Francisco has discovered in the course of its own contemporaneous federal litigation on these issues that the involuntary lawbreaking assumption is unsound. The reasons why persons sleep on the streets differ and include, in some cases, personal unwillingness to use public assistance grants to pay for available housing or

reluctance to subscribe to community programs to aid or ensure permanent housing. Many homeless have indicated that enforcement of laws against camping and sleeping in public spurs them to seek permanent housing, helping the homeless and the community both. By constitutionalizing its own assumptions about the homeless, Tobe has trumped the evolving political dialogue in favor of a judicial decree.

4. In holding that the homeless are immune to the law absent alternative housing, Tobe suggested an implied right to public housing. This implied constitutional right to housing in Tobe would impose substantial and unanticipated obligations on communities as preconditions to enforcement of laws regulating the use of public areas. Such an implied constitutional right is not supported by the federal or California Constitution, statutes, or decisional law and should be rejected by the Supreme Court of this State.

5. The "constitutionalization" of the right to encamp in public areas, the right to adequate shelter, or the right to perform human activities in public spaces would usurp the democratic process. It is essential that communities retain the freedom to experiment in their attempts to reach harmony between the competing interests of compassion and justice for the individual and the preservation of public spaces and resources for the maximum utility of the many. The cities of this state employ various statutes to enforce their public priorities, but the ruling in Tobe would imperil them all, without regard to fine distinctions. For example, the anti-camping ordinance in effect in Santa Ana differs markedly from the camping ordinance in San Francisco. The Tobe decision would potentially reach them both. San Francisco believes that it is necessary and constitutionally appropriate that municipal efforts, including law enforcement, be provided the Constitutional latitude in the wake of the Tobe ruling to flourish, notwithstanding the court's assessment of the Santa Ana ordinance.

Applicant City and County of San Francisco respectfully requests, pursuant to Rules 14(b) and 43 of the California Rules of Court, an opportunity to submit a brief amicus curiae to the Court to address the issues of especial significance to the City and County of San Francisco and to the other cities that will be joining in the brief. Because San Francisco is in process of obtaining information from other members of the League of California Cities regarding the impact of the Tobe decision on their own local efforts, amicus curiae requests that this Court allow San Francisco to submit its amicus curiae brief on or about July 31, 1994,

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Archie Tobe, et al. vs. City of Santa Ana, et al.
Supreme Court of the State of California
No. S038530

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